IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RYAN P. DINGS, et al. : CIVIL ACTION

:

V.

: NO. 12-4559

GERARD LENHOFF, JR. :

MEMORANDUM AND ORDER

JACOB P. HART UNITED STATES MAGISTRATE JUDGE February 19, 2013

During a telephone conference with counsel this morning to establish a trial schedule, it was discovered that the parties were not in agreement as to whether this case would be tried as a Bench Trial or a Jury Trial. Plaintiff wanted a jury trial and stated that one had been demanded. Defendant claimed that Plaintiff was not entitled to a jury trial in a case where the only Count was one brought under Pennsylvania's Unfair Trade Practice and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat. Ann, Section 201-1 *et seq*.

For the following reasons, the Court has decided that this case will be tried as a Bench Trial.

First, Plaintiff's Complaint does not demand a jury trial. Although the Civil Cover Sheet attached to the Complaint checks the "yes" box in the Section titled JURY DEMAND," the "yes" box can only be checked "if demanded in complaint."

Second, in 2012 the Pennsylvania Superior Court held that claims under the UTPCPL

cannot be tried before a jury. Fazio v. Guardian Life Insurance Company of America, 2012 Pa.

Super 273, 2012 WL 6177271 (Pa. Super 2012). Since the Pennsylvania Supreme Court has not

decided this issue, Fazio is the only Pennsylvania appellate decision on this subject. The court's

opinion thoroughly examines the issue, and in our view properly construes the statute. We see

no reason to believe that the Pennsylvania Supreme Court would rule otherwise.

Accordingly, in this diversity case we will apply the law as stated in Fazio.

An appropriate ORDER follows.

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART UNITED STATES MAGISTRATE JUDGE